

**From:** Roy Stogner  
**To:** Microsoft ATR  
**Date:** 1/23/02 1:27pm  
**Subject:** Microsoft Settlement

I am writing to register my disappointment at the proposed Final Judgement settlement in the U.S. v. Microsoft anti-trust case.

The most glaring deficiency of the proposed settlement, of course, is that it is utterly ineffectual at even elaborating on the existing legal restrictions that antitrust law places on Microsoft. Doubtless the DoJ has been flooded with explanations of these problems, but I refer you to Dan Kegel's excellent essay on the subject (already submitted as a Tunney act comment, and archived at <http://www.kegel.com/remedy/remedy2.html>) as the most intelligent elaboration of the settlement's loopholes and problems which I have seen. Because Microsoft has a record of finding such technical loopholes to legal restrictions (or, failing that, ignoring the restrictions outright), it is my belief that the proposed settlement will do nothing to prevent Microsoft from continuing it's current use of the Windows monopoly to maintain and extend that monopoly market share through illegal licensing and exclusionary agreements.

In order to prevent Microsoft from abusing it's control over monopoly software products in the future, nothing short of uniform licensing for all it's products will suffice. Microsoft must not be allowed to license it's products differently to different customers, because even in the most benign cases of such special licensing it has and will continue to hold special pricing and special allowances as a bully's stick with which to control the behavior of other software and hardware companies. When I can get a Windows license via Dell computer more cheaply than I can get it from a retail store, I am coerced into buying from Dell (and other major PC assemblers), and they in turn must agree to whatever illegal restrictions Microsoft imposes or risk their very survival. Microsoft is aware of this power they have, and they use it. It must be removed. Microsoft must be required to release it's software at a constant price for any customer, OEM or individual, and they must be prevented from allowing any restrictions on the use or resale of that software beyond what is allowed by copyright law. Nothing less will suffice to prevent the continued illegal exploitation of their market position. Even this restriction is necessary but not sufficient; it should be added to the proposed settlement and should not replace it.

There is one thing that I feel must be added to Mr. Kegel's comments, which in his essay was completely absent: even if the proposed settlement were completely free from loopholes, it would be insufficient. Microsoft repeatedly broke both U.S. law and court

orders, and has profited to the extent of tens of billions of dollars and dozens of destroyed and crippled competitors in the process. If the only punishment they face is a set of restrictions designed to make the continuation of these acts harder, then they really have not been punished at all. The settlement against Microsoft must "deny to the defendant the fruits of its statutory violation", or it does not act as a disincentive to further violations at all.

The most direct way of enacting such a punishment is simply to fine Microsoft at a level commensurate with their criminal gains. Fortunately, Microsoft holds a cash (and cash equivalents) reserve of over thirty billion dollars, and so such a fine could be levied without requiring any business-disrupting liquidation on their part. Microsoft has repeatedly demonstrated that they are motivated by money and not by the law; they will cease illegal behavior once it becomes financially unwise, and not a moment sooner.

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Roy Stogner